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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

BUREAU OF CONSUMER FINANCIAL
PROTECTION,

Plaintiff,

v.

PROGREXION MARKETING, INC., *et al.*,

Defendants.

Case No. 2:19-cv-00298-BSJ

**PLAINTIFF'S MOTION FOR LEAVE TO FILE
MOTION AND EXHIBITS UNDER SEAL AND
NOTICE OF *IN CAMERA* SUBMISSION**

Pursuant to DUCivR 5-3, Fed. R. Civ. P. 26(b)(5)(B), and the Modified Protective Order entered in this case (ECF 72), Plaintiff Bureau of Consumer Financial Protection (the Bureau) moves the Court for leave to file under seal a portion of its Motion to Compel Defendants to Produce Clawed-Back Documents and Unredacted Sample of Call Recordings, as well as certain Exhibits to that Motion. The Bureau also provides notice that Exhibit 1, which includes copies of documents that Defendants have improperly clawed back, will be mailed to the Court on an encrypted CD for *in camera* review. The other sealed exhibits (6-14 and 16-20), as well as an unredacted copy of the Motion to Compel, are being filed contemporaneously with this Motion. A redacted copy of the Motion to Compel will additionally be filed on the public docket.

At issue in Plaintiff's Motion to Compel is Defendants' improper invocation of the attorney-client privilege to claw back ten documents and their duplicates. Pursuant to Fed. R. Civ. P. 26(b)(5)(B), which is incorporated in Section 9(a) of the parties' Modified Protective Order, Plaintiff may challenge Defendants' designation of these documents as privileged by submitting them to the court under seal. Accordingly, Plaintiff seeks leave to submit these documents under seal for *in camera* review as Exhibit 1 to its Motion to Compel. Plaintiff additionally seeks

leave to file under seal a portion of its Motion to Compel that describes the content of the improperly clawed-back emails.

Finally, Plaintiff seeks leave to file under seal Exhibits 6-14 and 16-20 to its Motion to Compel, as these documents contain information that Defendants have designated as “Confidential Information.” Under the Modified Protective Order, the Bureau is required to file under seal all documents designated “Confidential” by another party. While the Bureau takes no position at this time on Defendants’ designation of their documents as “Confidential,” it seeks leave have them filed under seal as a courtesy and in an effort to comply with the Modified Protective Order.

A proposed order accompanies this motion.

Dated: October 21, 2020

Respectfully submitted,

/s/ Tracy L. Hilmer
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